

**MINUTES OF THE MEETING OF THE
ROWAN COUNTY BOARD OF COMMISSIONERS**

September 16, 2013 – 6:00 PM

J. NEWTON COHEN, SR. ROOM

J. NEWTON COHEN, SR. ROWAN COUNTY ADMINISTRATION BUILDING
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Present: Jim Sides, Chairman
Craig Pierce, Vice-Chairman
Jon Barber, Member
Mike Caskey, Member
Chad Mitchell, Member

County Manager Gary Page, Clerk to the Board Carolyn Barger, County Attorney Jay Dees and Finance Director Leslie Heidrick were present.

Return America held a ***Rally in Rowan (Rally)*** outside the J. Newton Cohen, Sr. Rowan County Administration Building in a show of support for the Rowan County Board of Commissioners position on prayer at meetings. It was estimated that 2,000 people attended the ***Rally***.

Chairman Sides thanked everyone in attendance for their support and concern.

Chairman Sides convened the meeting at 6:00 p.m.

Commissioner Caskey provided the Invocation and also led the Pledge of Allegiance.

Chairman Sides announced the 2013 Rowan County Annual Operation Medicine Drop-off/Special Waste Recycling Event scheduled for October 2, 2013.

Chairman Sides reported that the event is free and he encouraged citizens to take advantage of the opportunity as the event was only held twice each year.

CONSIDER ADDITIONS TO THE AGENDA

Commissioner Pierce moved to add a resolution to the Consent Agenda from the NC Department of Transportation, Division of Airways, for a grant in the amount of \$320,000 to be used on the airport hangar.

Chairman Sides said he would accept the motion with one change and he pointed out the Clerk to the Board's last name was incorrect and should be changed to Barger.

Upon being put to a vote, the motion to add the resolution to the Consent Agenda with the name correction passed unanimously.

CONSIDER DELETIONS FROM THE AGENDA

Commissioner Pierce referred to item G on the Consent Agenda and said he would like to move items #5 and #6 to the regular agenda on October 7, 2013. The motion was seconded by Commissioner Caskey and passed unanimously.

CONSIDER APPROVAL OF THE AGENDA

Commissioner Pierce moved, Commissioner Mitchell seconded and the vote to approve the agenda passed unanimously.

CONSIDER APPROVAL OF THE MINUTES

Commissioner Mitchell moved, Commissioner Barber seconded and the vote to approve the minutes of the September 3, 2013 Commission Meeting passed unanimously.

1. CONSIDER APPROVAL OF CONSENT AGENDA

Commissioner Barber requested to move item G to the regular agenda and due to the lack of a second, Chairman Sides said the Board would consider approval of the Consent Agenda.

Commissioner Pierce moved approval of the Consent Agenda and the motion passed 4-1 with Commissioner Barber dissenting.

The Consent Agenda consisted of the following:

- A. Ambulance Franchise Agency Renewal
- B. Set Quasi-judicial Hearing for CUP 07-13 for October 7, 2013
- C. Community Hangar Lease Rate Schedule
- D. Donation of Vehicle to East Spencer Police Department
- E. Proclamation Honoring the Military Order of the Purple Heart

WHEREAS, the Purple Heart is the oldest decoration in present use and was initially created as the Badge of Military Merit by George Washington in 1782; *and*

WHEREAS, the Purple Heart was the first American service award or decoration made available to the common soldier and is specifically awarded to any member of the United States Armed Services wounded or killed in combat with a declared enemy of the United States; *and*

WHEREAS, the mission of the Military Order of the Purple Heart, chartered by an act of Congress, is to foster an environment of goodwill among the combat wounded veteran members and their families, promote patriotism, support legislative initiatives, and most importantly, to make sure we never forget; *and*

WHEREAS, Rowan County has had several residents make the ultimate sacrifice for the cause of freedom in all the world wars and has a number of veterans who have resided in Rowan County and have been awarded the Purple Heart; *and*

WHEREAS, Rowan County, as part of Chapter 634, Military Order of the Purple Heart, wishes to pledge its support for this noble organization and for those who put their lives at risk in service of the Country and fellow citizens.

NOW, THEREFORE, BE IT PROCLAIMED, that the Rowan County Board of Commissioners hereby honors the Military Order of the Purple Heart and proudly proclaims Rowan County as a
“PURPLE HEART COUNTY IN THE STATE OF NORTH CAROLINA.”

- F. Set Public Hearing for October 7, 2013 for EDC Project East
- G. Proposed Reductions in Force and Reorganization (Items #5 and #6 listed in the memorandum were pulled for placement on the October 7, 2013 agenda)
- H. Resolution from NC Department of Transportation, Division of Airways, for Grant In the Amount of \$320,000 to Be Used On the Airport Hangar (this item was added to the Consent Agenda with one correction being noted)

(Note: At this point in the meeting, the Board moved to agenda item #3 in the order of discussion.)

2. PUBLIC COMMENT PERIOD

Chairman Sides opened the Public Comment Period to entertain comments from any citizens wishing to address the Board. The following individuals came forward:

- David Gibbs, Attorney with the National Center for Life and Liberty, addressed the Board. Mr. Gibbs is also the attorney representing Rowan County in the case filed by the American Civil Liberties Union (ACLU) pertaining to the Commissioners providing sectarian prayers at meetings. Mr. Gibbs referred to the large crowd outside the building, (which was estimated at 2,000) and said those citizens had chosen to come out and show their support of the Board's position. Mr. Gibbs said the case against Rowan County was moving slowly, waiting to see how the US Supreme Court ruled in another case. Mr. Gibbs said a ruling was anticipated by the US Supreme Court no earlier than February 2014 and no later than June 2014. Mr. Gibbs referenced the crowd and said the citizens did not want the courts establishing a religion.
- Dr. Ron Baity, President of Return America, said our nation's history was replete with prayers being offered in the name of Jesus. Dr. Baity said in 1776 the Declaration of Independence was created and he described how the first recorded prayer in the history of this nation was prayed in the name of Jesus Christ. Dr. Baity discussed the Constitution and its' reference to the duties of the three (3) branches of government. While the judicial branch was only given three (3) responsibilities, Dr. Baity pointed out the judicial branch has been responsible for changing more laws in our

land than the other two (2) branches (legislative and President) put together. Dr. Baity said prayer and Bible in schools has ceased because of judiciary changes, as well as prayer at graduations and sporting events. Dr. Baity said citizens were now being told they cannot pray in legislative settings by the judiciary branch.

- Whitney Johnson Peckman, spoke in opposition to the Board providing sectarian prayers at meetings.
- John Morris said he found it offensive when Commissioner Barber had used scripture at a recent Salisbury City Council Meeting to belittle his fellow board members. Mr. Morris said he was before the Board as a taxpayer, a veteran and a Bible-believing Christian to call for the resignation of Commissioner Barber. Mr. Morris also addressed the Board's proposal to cut the hours of the current Veterans Service Officer (VSO) and said the Board would be taking part of the veterans' soul to take away from the VSO.
- Al Drye spoke in support of the Board providing sectarian prayers at meetings. In conclusion, Mr. Drye concluded with a prayer for the Board.
- Larry Wright spoke in support of the Board providing sectarian prayers at meetings.
- Elaine Howle, VSO, discussed the proposed cut to her hours. Ms. Howle also described the services and benefits her office provided to veterans. Ms. Howle said she worked to ensure veterans received all the benefits to which they were entitled.
- David Hand, President of the Rowan County Veterans Council, spoke against cutting the VSO hours and asked the Board to reconsider its decision.
- "Wild Bill" Corriher spoke in support of the VSO and against cutting her hours.
- Mark Smith thanked God for the veterans in attendance and for their service. Mr. Smith spoke in support of the Board opening meetings with sectarian prayer.
- Reverend Johnny Boggs spoke in support of the Board opening meetings with sectarian prayer.
- Representative Carl Ford spoke in support of the Board opening meetings with sectarian prayer. In conclusion, Representative Ford prayed for the Board.

With no one else wishing to address the Board, Chairman Sides closed the Public Comment Period.

3. PUBLIC HEARING FOR FY '14 RURAL OPERATING ASSISTANCE PROGRAM GRANT

(Note: This item was moved by Chairman Sides in the order of discussion and followed approval of the Consent Agenda.)

Gary Price, Director of Rowan Transit System, reported that the North Carolina Department of Transportation (DOT) had released the application for the FY 2014 Rural Operating Assistance Program (ROAP), which was funded by the NC General Assembly.

Mr. Price reviewed the ROAP, which consolidated three (3) different transportation programs into a single application making Rowan County eligible to apply for \$238,491 in transit operating funds.

The Rowan Transit System (RTS) Advisory Committee submitted the following recommendations:

1. Apply for \$98,619 in Elderly & Disabled Transportation Assistance Program (EDTAP) funds. No matching funds are required. The following sub-allocations were recommended:

Rowan Transit	\$56,869	Therapeutic Recreation	\$9,250
Vo. Opportunities	\$ 3,250	Trinity Living Center	\$28,000

2. Apply for \$114,979 in Rural General Public (RGP), which requires a 10% match of \$12,775; total \$127,754.

3. Apply for \$24,943 in the Employment Transportation. No match required.

Chairman Sides opened the public hearing to receive citizen input regarding the ROAP application. With no one wishing to address the Board, Chairman Sides closed the public hearing.

Commissioner Pierce moved to authorize the Board Chairman to execute the NCDOT Grant Certification Statement containing the standard assurances that Rowan County would use the ROAP funding in a manner consistent with the State Management Plan for the ROAP funding. Commissioner Barber seconded and the motion passed unanimously.

(Note: At this point in the meeting, the Board moved to agenda item #2 in the order of discussion.)

4. CONSIDER OFFER TO PURCHASE PROPERTY LOCATED ON HILL TOP DRIVE

Chairman Sides said an offer to purchase a .51 acre vacant tract located on Hill Top Drive, in the Spring Valley Subdivision off Miller Road, was received from Donald Daniels, Jr. Chairman Sides said the property, known as Tax Map/Parcel 209 069, was non-buildable due to the property being low and wet. The tax value of the property is \$9520. Chairman Sides stated the offer to purchase was in the amount of \$3,500.

Chairman Sides said if the Board was willing to accept the offer, the property should be declared as surplus and advertised for upset bids.

Commissioner Barber moved to declare the property as surplus. The motion was seconded by Commissioner Pierce and passed unanimously.

5. CONSIDER APPROVAL OF BUDGET AMENDMENT

Finance Director Leslie Heidrick presented the following budget amendment for the Board's consideration:

- Finance – To recognize reserved funds from FY 2013 for the Sheriff's Office Justice Assistance Grant (JAG). The reserved funds represent money received by a Department for a restricted purpose. The funds that have not been spent by year end are budgeted for expenditure in the new fiscal year - \$7,115

Commissioner Pierce moved approval of the budget amendments as presented. The motion was seconded by Commissioner Mitchell and passed unanimously.

6. DISCUSSION REGARDING ROWAN COUNTY BOARD OF COMMISSIONERS CODE OF ETHICS

Chairman Sides referenced North Carolina General Statute § 160A-86, which pertained to the requirement for local governing boards to adopt a code of ethics. A copy of the applicable statute was included in the agenda packet.

Chairman Sides said the Rowan County Board of Commissioners (BOC) adopted a Code of Ethics (COE) on September 7, 2010, which was included in the agenda packet. The COE outlined the expectations of each commissioner in their everyday responsibilities to the board and public while fulfilling their elected duties. Chairman Sides went on to state that each commissioner had signed and acknowledged receipt and review of the COE. A copy of the acknowledgment was included in the agenda packet.

Chairman Sides said Commissioner Barber had been confronted by the BOC in Closed Session on January 22, 2013 for what was considered a violation of the COE. The impropriety noted was the use of the County's equipment and supplies for what appeared to be non-county related business. Chairman Sides said Commissioner Barber had apologized to the BOC and promised it would not happen again.

Chairman Sides went on to state that since January 22, 2013, it was believed that production of printed material for private use by Commissioner Barber had continued.

Under the guidelines of the COE, Chairman Sides said a procedure for the censure of a seated Commissioner existed. Chairman Sides read from the COE as follows:

Censure of Board Members

Censure Procedures. If a majority of the board has reason to believe that one of its members has violated a provision of this Code of Ethics, it may open an investigation into the matter to determine whether probable cause exists to initiate censure proceedings against the member. All information compiled, including the grounds for any finding of probable cause, shall be shared with the member when it is received. All information pertaining to the case shall be open to public inspection and copying pursuant to the North Carolina public records statutes. If upon investigation, the board concludes that a violation of a criminal law may have occurred, it shall refer the matter to the local district attorney.

Should the board determine that it wishes to proceed further with censure proceedings, it shall call for a hearing, to be held at a regular meeting or at a special meeting convened for that purpose. Notice of the hearing stating its time, place and purpose shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the jurisdiction. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Alternatively, the hearing shall be advertised on the jurisdiction's website for the same period of time, up to and including the date of the hearing. The notice shall state that a detailed list of the allegations against the member is available for public inspection and copying in the office of the clerk to the board.

The hearing shall be convened at the time and place specified. The hearing and any deliberations shall be conducted in open session in accordance with the North Carolina open meetings statutes.

The accused board member shall have the right to have counsel present, to present and cross-examine expert and other witnesses, and to offer evidence, including evidence of the bias of any other board member or the presiding officer. An audio or video and audio tape of the proceedings shall be prepared. Any and all votes during the hearing shall be taken by the ayes and noes and recorded in the board's minutes.

Once the hearing is concluded, it shall be closed by vote of the board. The presiding officer shall next entertain a motion to adopt a nonbinding resolution censuring the member based on specified violations of the Code of Ethics. Any motion made must be an affirmative one in favor of adopting a nonbinding resolution of censure. If the motion or resolution does not state particular grounds for censure under the Code of Ethics, the presiding officer shall rule it out of order.

If a motion to adopt a nonbinding resolution of censure stating particular grounds under the Code of Ethics has been made, the board shall debate the motion. The accused member shall be allowed to participate in the debate and shall also be allowed to vote on the motion to adopt the resolution.

At the conclusion of the debate, the board shall vote on the resolution. If the motion to adopt the nonbinding resolution of censure is approved by a majority vote of those present and voting, a quorum being present, the motion passes and the nonbinding resolution of censure is adopted.

The text of the nonbinding resolution of censure shall be made a part of the minutes of the board. Any recording of the board's proceedings shall be approved by the board as a permanent part of the minutes. The proceedings shall then be considered concluded, the board having done all it legally can with respect to the matter in question.

Chairman Sides said he had consulted with the County Attorney to make sure the process was properly handled, should the Board proceed. According to Chairman Sides, step one (1) would be to vote on opening an investigation at the

current meeting and request that Risk Manager, Yvonne Moebs, conduct the investigation and obtain the all materials.

Chairman Sides stated that step two (2) would be to present the compiled information at a second meeting, along with the grounds for finding probable cause for censure. Chairman Sides said at that point, there would be a vote to proceed with censure or drop the proceedings. Chairman Sides said if the vote were to proceed, then a quasi-judicial hearing would be set for the next regular or special called meeting. Chairman Sides said the notice of the hearing would be published at least once per week for two (2) consecutive weeks.

Chairman Sides said the third step would be to conduct the hearing and deliberations. Chairman Sides said the hearing would then be closed and a motion would be accepted to either cancel the proceedings or to adopt a non-binding resolution to censure based on the specified violation of the COE.

Chairman Sides said he was presenting the information for the Board to vote whether to proceed with the censure process.

Commissioner Pierce moved to proceed with the investigation. Commissioner Caskey seconded the motion.

Commissioner Caskey said that in this country people were innocent until proven guilty. Commissioner Caskey said he felt at this point there was reasonable suspicion to start the investigation.

Commissioner Barber said he felt it important to state that while he may disagree with the proceedings, the Board should know that he remained steadfast in its position with regards to praying in the name of Jesus.

Commissioner Barber went on to say that according to the School of Government (SOG), a motion of censure had no legal effect other than to express the dissatisfaction of the majority of the Board. Commissioner Barber said it was no secret that the majority of the Board was upset with him due to the fact that he responded to questions from the media about county business and that he was open and transparent with the public. Commissioner Barber felt the issue was not about copies but rather could be viewed as a way to silence him. Commissioner Barber referred to the COE as a code of silence.

Commissioner Barber said when it came to being open with the public and media about the County's business; he would take the high road versus the majority of the Board. Commissioner Barber stated he could not be silent; however, he felt members of the majority of the Board had violated the policy of being open with the public. Commissioner Barber said over the next several weeks he would be submitting "my turn" opinions to the Salisbury Post outlining the ethics

inconsistencies to let the public be the judge. Commissioner Barber asked the Board to allow him to be responsive to the interests and needs of the citizens.

Commissioner Barber referenced the comments he made on September 3, 2013 when addressing Salisbury City Council. Commissioner Barber said if one was to watch the video, there was no reference to any individual Commissioner regarding self-righteousness. Commissioner Barber said he was actually pointing to himself and he could be included in the category.

Commissioner Barber said he respected the Board's decision, had no anger, and was willing to move forward.

Commissioner Mitchell said he had no problem with Commissioner Barber talking to the media and encouraged him to talk to the media anytime. Commissioner Mitchell said he did not know if Commissioner Barber had made copies inappropriately or not but if so, it was wrong and a censure was in order. Commissioner Mitchell said the censure was little more than the Board stating it did not like what one member was doing. Commissioner Mitchell said he did not care who talked to the media or in what regard they talked to the media. Commissioner Mitchell restated that he believed if the actions that were brought up had occurred, a censure was in order.

Commissioner Pierce said he did not care what Commissioner Barber said to the press and that he himself talked to the press frequently to keep them informed. Commissioner Pierce said the action of censure was not being directed at Commissioner Barber for his speeches to the press, City Council or to any other organization, but rather for an investigation of facts. Commissioner Pierce said in no way, shape, or form was this any type of retribution for Commissioner Barber's statements. Commissioner Pierce said Commissioner Barber was entitled to his opinion, even if it was not the opinion of the entire Board.

Commissioner Pierce continued by saying the investigation was an action to determine if there had been some improprieties that had already been identified once before in closed session. Commissioner Pierce said it had been brought to the Board's attention that the improprieties had continued and the Board would like to find out just how far the impropriety went. Commissioner Pierce said he had no animosity towards Commissioner Barber's statements. Commissioner Pierce stated if the censure comes about, he would be allowed to say what he wanted to Commissioner Barber.

Upon being put to a vote, the motion passed 4-1 with Commissioner Barber dissenting.

7. CLOSED SESSION

Commissioner Pierce moved at 7:09 p.m. that the Board now enter Closed Session pursuant to North Carolina General Statute §143-318.11(a)(1), §143-

318.11(a)(6), §143-318.11(a)(4), §143-318.11(a)(3) for approval of closed session minutes, personnel, economic development, and for attorney-client privileged communication pertaining to the mediation status with the Board of Education. Commissioner Barber seconded and the motion passed unanimously.

The Board returned to Open Session at 8:34 p.m. No action was taken.

8. ADJOURNMENT

There being no further business to come before the Board, Commissioner Barber moved to adjourn at 8:34 p.m. The motion was seconded by Commissioner Pierce and passed unanimously.

Respectfully Submitted,

Carolyn Barger, CMC, NCCCC
Clerk to the Board/
Assistant to the County Manager